

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

CHRIS STEVEN FINK,

Plaintiff,

vs.

MONTANA STATE PRISON,
YAVONIVICH–UNIT MANAGER,
WILLIS–GUARD,

Defendants.

CV 16-00081-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

On June 1, 2017, this Court issued an Order finding that Plaintiff Chris Fink’s Complaint failed to state a claim upon which relief could be granted and the case was subject to dismissal. As it might have been possible to cure the defects with the allegation of additional facts, Mr. Fink was given an opportunity to file an amended complaint on or before June 30, 2017. (Doc. 7.) He did not do so.

Accordingly, for the reasons set forth in the Court’s June 1, 2017 Order (Doc. 7), the Court issues the following:

RECOMMENDATIONS

1. This matter should be **DISMISSED WITH PREJUDICE** for failure to state a claim.
2. The Clerk of Court should be directed to close this matter and enter

judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court should be directed to have the docket reflect that the Court certifies under Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Fink failed to state a claim upon which relief may be granted.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Fink may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of

¹As this deadline allows a party to act after the Findings and Recommendations is “served,” it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 28th day of July 2017.

/s/ John Johnston
John Johnston
United States Magistrate Judge